

The Senate Public Safety Committee offered the following substitute to HB 545:

A BILL TO BE ENTITLED  
AN ACT

To amend Article 2 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to commencement and service of civil actions, so as to revise provisions relating to service of process; to provide for certification of persons authorized to serve process throughout the state; to provide for service upon persons residing in gated and secured communities; to provide for filing the return of service; to change certain provisions relating to process in civil practice; to provide for certification of certified process servers authorized to serve process throughout the state; to provide for qualifications, procedures, and other matters with respect to such certification; to regulate the professional conduct of certified process servers; to define the crime of impersonating a process server and provide for punishment; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 2 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to commencement and service of civil actions, is amended in Code Section 9-11-4, relating to service of process, by revising subsection (c) as follows:

*"(c) Summons — By whom served.* Process shall be served by:

- (1) The ~~the~~ sheriff of the county where the action is brought or where the defendant is found; or by such sheriff's deputy;
- (2) The ~~, or by the~~ marshal or sheriff of the court; or by such official's deputy;
- (3) Any ~~, or by any~~ citizen of the United States specially appointed by the court for that purpose;
- (4) A person ~~, or by someone~~ who is not a party and is not younger than 18 years of age and has been appointed as a permanent process server by the court in which the action is brought; ; or

(5) A certified process server under Code Section 9-11-4.1, provided that the sheriff of the county for which process is to be served allows such servers to serve process in such county.

Where the service of process is made outside of the United States, after an order of publication, it may be served either by any citizen of the United States or by any resident of the country, territory, colony, or province who is specially appointed by the court for that purpose. When service is to be made within this state, the person making such service shall make the service within five days from the time of receiving the summons and complaint; but failure to make service within the five-day period will not invalidate a later service."

## SECTION 2.

Said article is further amended in subsection (f) of said Code section by adding a new paragraph to read as follows:

"(4) SERVICE UPON PERSONS RESIDING IN GATED AND SECURED COMMUNITIES.

(A) As used in this paragraph, the term 'gated and secured communities' means multiple residential or commercial properties, such as houses, condominiums, offices, or apartments, where access to the multiple residential or commercial properties is restricted by a gate, security device, or security attendant that restricts public entrance onto the property; provided, however, that a single residence, farm, or commercial property with its own fence or gate shall not be included in this definition.

(B) Any person authorized to serve process shall be granted access to gated and secured communities for a reasonable period of time during reasonable hours for the purpose of performing lawful service of process upon:

(i) Identifying to the guard or managing agent the person, persons, entity, or entities to be served;

(ii) Displaying a current driver's license or other government issued identification which contains a photograph; and

(iii) Displaying evidence of current appointment as a process server pursuant to this Code section.

(C) Any person authorized to serve process shall promptly leave gated and secured communities upon perfecting service of process or upon a determination that process cannot be effected at that time."

## SECTION 3.

Said article is further amended in said Code section by revising subsection (h) as follows:

"(h) *Return*. The person serving the process shall make ~~proof of service thereof to the court promptly and, in any event, within the time during which the person served must respond to the process~~ proof of such service with the court in the county in which the action is pending within five business days of the service date. If the proof of service is not filed within five business days, the time for the party served to answer the process shall not begin to run until such proof of service is filed. Proof of service shall be as follows:

- (1) If served by a sheriff or marshal, or such official's deputy, the affidavit or certificate of the sheriff, marshal, or deputy;
- (2) If by any other proper person, such person's affidavit;
- (3) In case of publication, the certificate of the clerk of court certifying to the publication and mailing; or
- (4) The written admission or acknowledgment of service by the defendant.

In the case of service otherwise than by publication, the certificate or affidavit shall state the date, place, and manner of service. Failure to make proof of service shall not affect the validity of the service."

#### SECTION 4.

Said article is further amended by adding a new Code section to read as follows:

"9-11-4.1.

(a) *Certified process servers*. A person at least 18 years of age who files with the Administrative Office of the Courts an application stating that the movant complies with this Code section and any procedures and requirements set forth in any rules or regulations promulgated by the Judicial Council of Georgia regarding this Code section shall, absent good cause shown, be certified as a process server by the Administrative Office of the Courts. Such certification shall be effective for a period of three years or until such approval is withdrawn by the Administrative Office of the Courts upon good cause shown, whichever shall first occur. Such certified process server shall be entitled to serve in such capacity for any court of the state, anywhere within the state, provided that the sheriff of the county for which process is to be served allows such servers to serve process in such county.

(b) *Certification procedures*.

(1) Any person seeking certification under this Code section shall upon applying for certification present evidence that he or she:

- (A) Has undergone a criminal record check based on fingerprints and has never been convicted of a felony or of impersonating a peace officer or other public officer or employee under Code Section 16-10-23;

(B) Completed a 12 hour course of instruction relating to service of process which course has been approved by the Administrative Office of the Courts in consultation with the Georgia Sheriffs' Association;

(C) Passed a test approved by the Administrative Office of the Courts which will measure the applicant's knowledge of state law regarding serving of process and other papers on various entities and persons;

(D) Obtained a commercial surety bond or policy of commercial insurance conditioned to protect members of the public and persons employing the certified process server against any damage arising from any actionable misconduct, error, or omission on the part of the applicant while serving as a certified process server; and

(E) Is a citizen of the United States.

(2) The Administrative Office of the Courts shall review the application, test score, criminal record check, and such other information or documentation as required by that office. Upon review, the office shall make a fitness determination in accordance with standards and procedures promulgated by the Judicial Council of Georgia as to whether the applicant shall be approved for certification and authorized to act as a process server in this state; and the office's determination shall be provided to the applicant in writing.

(3) Upon approval the applicant shall complete a written oath as follows: 'I do solemnly swear (or affirm) that I will conduct myself as a process server truly and honestly, justly and uprightly, and according to law; and that I will support the Constitution of the State of Georgia and the Constitution of the United States. I further swear (or affirm) that I will not serve any papers or process in any action where I have a financial or personal interest in the outcome of the matter or where any person to whom I am related by blood or marriage has such an interest.'

(c) *Renewal and revocation of certification.* A certified process server shall be required to renew his or her certification every three years in such manner and at such time as required by the Administrative Office of the Courts. Any certified process server failing to renew his or her certification shall no longer be approved to serve as a certified process server. At the time of renewal, the certified process server shall provide evidence that he or she has completed three annual five-hour courses of continuing education which courses have been approved by the Administrative Office of the Courts and has undergone an updated criminal record check. The certification of a process server may be revoked or suspended for cause at any time. The Administrative Office of the Courts shall establish, by rule, procedures for suspending or revoking a certificate. Such rule shall include a procedure for the emergency suspension of a certificate for up to five business days while the Administrative Office of the Courts investigates a complaint filed by a sheriff alleging serious misconduct by the process server.

132 (d) Fees. The Administrative Office of Courts shall establish fees to be charged for the  
133 administration of this Code section such that the revenue generated from such fees shall  
134 approximate the total direct and indirect costs of administering this Code section.

135 (e) Appeals. Any disciplinary action of the board may be appealed by the aggrieved  
136 person to the Judicial Council, which shall have the power to review the determination by  
137 the Administrative Office of the Courts.

138 (f) Service by off-duty deputy sheriff. An off-duty deputy sheriff may serve process with  
139 the approval of the sheriff by whom he or she is employed and shall be exempt from  
140 certification under this Code section.

141 (g) Impersonation of public officer or employee. It shall be unlawful for a certified process  
142 server to falsely hold himself or herself out as a peace officer or public officer or employee  
143 and any violation shall be punished as provided in Code Section 16-10-23.

144 (h) Notice to sheriff. (1) Prior to the first time that a certified process server serves  
145 process in any county he or she shall file with the sheriff of the county a written notice,  
146 in such form as shall be prescribed by the Administrative Office of the Courts, of his or  
147 her intent to serve process in that county. Such notice shall only be accepted by a sheriff  
148 who allows certified process servers to serve process in his or her county. Such notice  
149 shall be effective for a period of one year; and a new notice shall be filed before the  
150 certified process server again serves process in that county after expiration of the  
151 one-year period.

152 (2) The provisions of this subsection shall not apply to a certified process server who was  
153 appointed by the court to serve process or who was appointed as a permanent process  
154 server by a court.

155 (i) Credentials. The Administrative Office of the Courts shall at the time of certification  
156 provide credentials in the form of an identification card to each certified process server.  
157 The identification card shall be designed to clearly distinguish it from any form of  
158 credentials issued to certified peace officers and will not be in the shape or form of a law  
159 enforcement badge. A certified process server shall display his or her credentials at all  
160 times while engaged in the service of process.

161 (j) False representation. It shall be unlawful for any person who is not a certified process  
162 server to hold himself or herself out as being a certified process server. Any person who  
163 violates this subsection shall upon conviction be guilty of a misdemeanor.

164 (k) Sunset and legislative review. This Code section shall be repealed effective July 1,  
165 2015, unless continued in effect by the General Assembly prior to that date. At its 2013  
166 regular session the General Assembly shall review this Code section to determine whether  
167 it should be continued in effect; and the Administrative Office of the Courts shall make a  
168 report to the General Assembly to assist in that review."

169 **SECTION 5.**

170 This Act shall become effective on July 1, 2010.

171 **SECTION 6.**

172 All laws and parts of laws in conflict with this Act are repealed.